

**SUBJECT:** Revised standards governing obscured license plates

**COMMITTEE:** Transportation — committee substitute recommended

**VOTE:** 6 ayes — Krusee, Deshotel, Harless, Hill, Macias, Murphy  
0 nays  
3 absent — Phillips, Harper-Brown, Haggerty

**WITNESSES:** For — (*Registered, but did not testify:* Darrin Hall, City of Houston; Dominic Gonzales, Texas Criminal Justice Coalition; Ron Hickman)  
Against — None  
On — (*Registered, but did not testify:* Steve Simmons, Texas Department of Transportation)

**BACKGROUND:** In 2003, the 78th Legislature enacted SB 439 by Lindsay, amending Transportation Code, sec. 502.409 to create a misdemeanor offense for displaying an altered or obscured license plate. A person commits an offense by displaying a license plate with reflective matter or some covering material that distorts the plate’s visibility during daylight or alters or obscures the letters or numbers on the plate, the color of the plate, or another original design feature. The offense is a misdemeanor punishable by a fine of \$200 or less, but if at trial it is shown the owner knowingly altered or obscured the letters, numbers, or other identifying marks, the offense is a class B misdemeanor class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

On February 14, 2007, in *State of Texas v. Craig Hill Johnson* (No. PD-1094-06), the Texas Court of Criminal Appeals affirmed a lower court ruling that a motorist violates the law when his or her license plate frame obscures any part of the original design of the plate, including the state name and nickname and pictorial designs.

Transportation Code, sec. 228.057 defines a “transponder” as a device placed on or inside an automobile that can be used to transmit information used to assess tolls.

**DIGEST:** CSHB 348 would amend Transportation Code, sec. 502.409 to specify that the use of any blurring or reflective substance on a license plate that at any time impaired the readability of its numbers, letters, or state name would be a misdemeanor.

The use of any coating or covering material or apparatus on a license plate that obscured at least one-half of the state's name or any of the characters of the license plate number also would be an offense. This provision would not apply to the following:

- a properly installed trailer hitch;
- a properly installed bicycle rack;
- a properly installed wheelchair lift or carrier;
- a transponder device; or
- a trailer being towed by a vehicle.

This bill would take effect September 1, 2007, and would apply to any offense occurring on or after that date.

**SUPPORTERS  
SAY:**

CSHB 348 would fix an unintended consequence of previous legislative action in light of a recent court decision that holds many Texas drivers in violation of the law if they block their license plates in any fashion. The Legislature never intended to penalize motorists for using toll tags or affixing frames around their plates. CSHB 348 no longer would allow police officers to stop vehicles for displaying their toll tags in this manner. Placing a frame or insignia around a license plate does nothing to obscure the license plate number, and allowing motorists to block no more than half the state's name would ensure that the state where the car was registered could be determined easily.

In enacting the original law, the 78th Legislature was responding to motorists' use of a spray-on substance that creates a sheen on license plates in an effort to elude photo-enforcement cameras used at toll booths and red-light cameras. Although provisions dealing with license plate frames are used selectively and rarely by law enforcement officials, the recent Court of Criminal Appeals decision affirmed the practice and acceptable use of what even one of the concurring opinions called an "uncommonly bad law."

Many drivers have no idea that affixing a frame around a license plate is illegal. In fact, many license plates are installed not by the owner but by the dealership at which the vehicle was sold. Drivers should be within their rights to use a frame, much like a bumper sticker, to declare their allegiance to a principle or institution. Many local school booster groups, for example, sell the frames as a way to make money to benefit school children. These groups, and the children they represent, would have to find another fund raising mechanism if their license plate frames were forbidden in Texas.

The state itself is violating its own law by telling motorists to affix toll tags on their license plates if they do not work on their windshields. Additionally, the law currently affects anyone driving in Texas, and motorists from other states where the practice is legal are subject to a citation when using Texas roads.

Current law as interpreted by the Court of Criminal Appeals opens the door for possible law enforcement abuse. An innocuous license plate frame gives police an excuse to stop a “suspicious-looking” driver who has not otherwise run afoul of the law. For those drivers already concerned about being pulled over solely because of their race or ethnicity, this law gives them an additional reason to worry. There already are a number of potential violations on the books for which an officer can stop a motorist. While a broken tail light, for example, might reasonably be considered a possible byproduct of other criminal activity, a slightly obscured license plate normally does not fit into this category. Police officers should have reasonable probable cause before stopping a driver and should be able to spend their time and resources on more important matters of public safety.

**OPPONENTS  
SAY:**

Blocking a license plate could hinder investigation of hit-and-run cases or other law enforcement efforts. It also would make it easier for a person to use a counterfeit license plate. Taking a tool away from law enforcement that could be used to remove a drunk driver from the road or thwart a criminal endeavor would not be beneficial for public safety. Motorists do not need a license plate frame to demonstrate their allegiance to a school or idea — they already can order specialty license plates or display bumper stickers.

Every item on the standard basic plate the state has issued since 2000 — from the oil rigs in the lower right corner to the space shuttle in the upper left corner — are pieces of information that could help a criminal

investigation. For instance, a witness or victim in a hit-and-run case might not have had the wherewithal or ability to make out letters on the plate but might have remembered one of these other visual clues. Unlike a license plate frame, which easily can be discarded, this piece of information might be useful in connecting a vehicle with a criminal activity. Additionally, counterfeiters could more easily make a fake license plate if they were not forced to replicate the entire plate and simply could shield the edges of the plate with a frame.

Current law also gives law enforcement another weapon with which to attack criminal activity. In the court case that prompted this bill, the driver was stopped by a police officer solely because his license plate was not fully in view. The officer then determined the driver had been drinking and arrested him for driving while intoxicated. Any number of other violations, from drug smuggling to driving without a license, can be detected and prosecuted using these tools. CSHB 348 would take away another method for law enforcement to do their jobs more effectively.

OTHER  
OPPONENTS  
SAY:

This bill should specify that the vehicle owner would be responsible for ensuring that a license plate was not improperly obscured. As noted in the dissenting opinion in the *Johnson* case, Transportation Code 502.409 makes it a crime to “attach or display” an obscured license plate but does not specify who should be held accountable. Under that definition, a car dealer who affixed a frame promoting his dealership could be in violation of the law, as could the owner of a vehicle and/or the driver. The language in CSHB 348 is vague and should be rewritten to match other sections of the Transportation Code that are clear about which party is accountable for criminal penalties.

CSHB 348 should specify that a substance blurring or obscuring a license plate must “significantly” change its readability. Through no fault of the vehicle owner, a variety of substances, such as mud or wet leaves, could attach themselves to a license plate and in some minor way obscure its information. Only obstructions that have a significant effect on the appearance of the license plate should result in penalties under this bill.

NOTES:

The committee substitute added exceptions for wheelchair lifts, bicycle racks, and trailers in tow.

The author is expected to accept an amendment that would make it an offense for applying a substance on a license plate that “significantly”

would impair its readability. A related bill, HB 743 by Dutton, which includes that provision along with one allowing the bill to take immediate effect, was heard by the House Transportation Committee on February 27 and left pending.

The identical companion bill, SB 369 by Williams, passed the Senate by 30-0 on March 14.

SB 631 by Patrick, which is similar to HB 348 but does not include exemptions for items that could block part of a license plate, was referred to the Senate Transportation and Homeland Security Committee.

During the 2005 regular session, the House passed HB 504 by Callegari, which would have created the same standards for determining an offense for obscuring a license plate as CSHB 348 but did not contain any of the exemptions. HB 504 was reported favorably, without amendment, by the Senate Transportation and Homeland Security Committee, but died when the Senate took no further action.